

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: March 26, 1981

SUBJECT: Missouri Implementation Plan - Final Rulemaking on  
Malfunction Regulations

FROM: Robert L. Patrick, Office of Regional Counsel

*Robert L. Patrick*

MO-18  
SIP  
docket

TO: Gale Wright, Acting Chief  
ARHM-ANRB

ATTN: Mary Carter

In accordance with your request, I have reviewed the subject rulemaking package and have the following comments:

1. The second paragraph on page 3 of the draft, relating to Executive Order 12291, states that the rule is not major because it is merely an approval of state actions and "it imposes no new regulatory requirements." The quoted phrase is consistent with the boilerplate language developed in connection with the nonapplicability determinations on SIP revisions for purposes of the Regulatory Flexibility Act. However, for purposes of the Executive Order, which is broader in scope than the Regulatory Flexibility Act, I recommend a more qualified statement than the quoted phrase. Therefore, in place of the phrase "imposes no new regulatory requirements," I suggest substitution of the phrase "imposes no additional substantive requirements which are not currently applicable under state law." The substitution of the latter language emphasizes that sources would not be required, as a result of EPA approval, to perform tasks which are not already required under state law, but does not understate the effect of EPA approval by implying that sources will not be subject to any additional requirements (such as differing procedural requirements as a result of federal enforceability of the regulation).

In order to be consistent, the change in the language recommended above would require that you change the boilerplate on the Regulatory Flexibility Act. Thus, I recommend that you add to the second sentence <sup>above</sup> of the last paragraph on page 3, the phrase "and imposes no additional substantive requirements." In addition, I suggest that you delete the third sentence of the same paragraph.

Because this is a final rulemaking, the phrase "if promulgated" should be deleted in the first sentence of the last paragraph on page 3.

2. The description of the specific regulations relating to malfunction, in the paragraph beginning on page 1 and continuing in the first paragraph on page 2 of the draft, is consistent with the description which was provided in the proposed rulemaking. However, the second sentence of that paragraph implies that the only regulatory changes were modification of the definition section, and deletion of the malfunction sections.

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While portions of the malfunction sections were deleted, other portions of the same sections were added. Therefore, I suggest that you omit the phrase "deletion of" in the first line on page 2 of the draft. Thus, the sentence would indicate that both the definition section and the substantive malfunction sections were "revised" by the new rule.

Similarly, in the regulatory portion of the package, your draft revision to Section 52.1320(c)(27) should omit the phrase "the deletion of" and substitute the term "amended" to convey the meaning described above.

3. I have attached a copy of the draft package which includes the changes recommended above and other, less substantive, changes suggested for your consideration.

Attachment